

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2149.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	June 18, 2004
DATE OF REPORT:	July 16, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 1, 2004

COMPLAINT ISSUES:

Whether the MSD of Lawrence Township violated:

511 IAC 7-27-6(a)(2) by failing to ensure that goals included in the student's individualized education program (IEP) are measurable.

511 IAC 7-27-6(a)(7)(A) by failing to include in the student's IEP a statement of how the student's progress toward annual goals, including benchmarks and short-term objectives, will be measured.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically:

1. failing to provide the parent with progress reports as described;
2. failing to provide the Soar's book when required;
3. failing to provide 90 minutes of assistive technology per month;
4. failing to conduct bi-monthly collaborative meetings;
5. failing to conduct additional evaluation by the end of the 2003-2004 school year;
6. failing to implement modifications as described;
7. failing to provide the student with opportunity to meet with the school psychologist*; and
8. failing to conduct a screening for Attention Deficit Disorder.

511 IAC 7-27-4(c) by failing to utilize the case conference committee (CCC) to determine the student's need for extended school year (ESY) services.

* During the course of the investigation, it was determined that item 7 of the third issue should have referred to a school social worker, not a school psychologist.

FINDINGS OF FACT:

1. The Student is 11 years old and is eligible for special education and related services due to a learning disability and communication disorder.
2. On October 13, 2003, the Student's case conference committee (CCC) agreed upon the Student's individualized education program (IEP). The School acknowledges that there are clerical errors in the IEP including, for example, the description on the front page identifying the IEP as the IEP for the period from September 25, 2002, to September 25, 2003. As correctly stated in the body of the IEP, the initiation date of the IEP was September 26, 2003, and the duration date is September 26, 2004. In addition to a meeting on January 20, 2004, to plan the Student's re-evaluation, the CCC reconvened on

March 25, 2004, on April 30, 2004, and on May 14, 2004. Goals and objectives were not revised at the subsequent CCC meetings.

3. The IEP includes an annual goal in each of the following four areas of identified need:

Reading decoding/comprehension,
Written Language,
Math, and
Communication/therapy for fluency.

The format utilized for each of the first three goals includes a statement of the amount of improvement (i.e., from 3.5 to 4.5 level or from 4.5 to 5.5) and a method for measurement of the improvement (i.e., DRA, 3rd and 4th grade writing rubrics, or Brigance). The objectives for each of the first three goals incorporate percentages to define mastery of sub-skills (e.g., write paragraphs with topic sentences and simple supporting facts and details with 80% accuracy). The Communication goal utilizes a different format: "[The Student] will improve [his/her] fluency by modifying [his/her] phonation, respiratory & articulatory processes & rates of speaking." The benchmarks under the Communication goal incorporate both percentages and number of trials (i.e., 70% accuracy 4/5 trials).

4. Near the bottom of each Goals and Objectives page of the IEP, there is a numbered list of evaluation procedures, headed by the title "PRO -- Procedures for Evaluation of Goals and Objectives." In the middle of the same page, there is a column titled "PRO" in which there is space to enter the number(s) corresponding to the evaluation procedure(s) selected by the CCC. For all of the IEP goals, at least one procedure was selected from the list (e.g., teacher observation, criterion-referenced test, etc.), and for three of the four goals, an evaluation procedure was specified within the goal statement itself.
5. For the Reading goal, the Math goal, and the Communication goal, the IEP required progress reporting every nine weeks, corresponding to the general education report card schedule. For the Written Language goal, the IEP required progress reviews daily (corresponding to the evaluation procedure based upon daily classroom writing assignments) as well as reporting every nine weeks.
6. The School submitted a copy of each of the four Goals and Objectives pages, with codes showing the Student's progress as of the reporting dates, but did not submit documentation showing that the progress reports were sent to the Parent with report cards. At the bottom of each Goals and Objectives page, the preprinted form includes spaces for noting the "Dates review sent to parents." These spaces are blank. During the CCC meeting on March 25, 2004, the School acknowledged that not all of the progress reports had been provided on the reporting dates. The Parent acknowledges receiving the completed progress reports at the end of the 2003-2004 school year. In addition, the Parent acknowledges receiving some of the progress reports when the Parent specifically asked for a progress report.
7. The CCC discussion notes from October 13, 2003, specify that the Teacher of Record (TOR) will send home the Student's Soar (reading) book every Friday.
8. The Parent acknowledges that the Soar book was sent home on the first five Fridays following the CCC meeting in October, 2003. The Parent denies that a Soar book was sent home thereafter. The School acknowledges that it has no documentation that Soar books were sent home.
9. The IEP provides for the related service of occupational therapy (direct/consult) in the general education classroom and pull-out, for a total of 90 minutes monthly. The services of the occupational therapist (OT) were connected to the Student's assistive technology, as the OT provided instruction in the use of assistive technology devices (Alpha-Smart and classroom computer with Co-writer). The

IEP does not specify how the 90 minutes/month is to be divided between direct services and consultation.

10. During the 8-month period beginning on the IEP initiation date (September 25, 2003) and ending on the last instructional day of the 2003-2004 school year (May 28, 2004), the OT provided a total of at least 785 minutes of direct/consultative services including 45 minutes at the October, 2003, CCC meeting, plus an unspecified amount of time on January 20, 2004, in a meeting regarding re-evaluation planning. Although fewer than 90 minutes of service were provided in some months (December, and January), more than 90 minutes of service were provided in other months (February and May). The OT's services included direct instruction of the Student as well as consultation with the TOR, the general education teacher, and the instructional assistant.
11. In the section describing supports for school personnel, the IEP calls for bi-monthly collaboration among the speech/language pathologist (SLP), the special education teacher, and the general education teacher. The IEP Addendum dated March 25, 2004, added an Instructional Assistant to the list of persons participating in the bi-monthly collaboration.
12. School personnel discussed the Student's needs and progress while eating lunch together more frequently than bi-monthly. The School acknowledges that it is unable to document these collaborative meetings, as neither attendance sheets nor meeting minutes were created.
13. The Student's triennial re-evaluation is due to be completed by September 4, 2004. On or about January 20, 2004, members of the CCC (including the Parent) conferred about the scope of the re-evaluation and agreed upon a comprehensive educational evaluation. On January 28, 2004, the Parent signed consent for re-evaluation on a Reevaluation Summary form that identified the due date as September 4, 2004.
14. On or about March 8, 2004, the Parent discussed re-evaluation with the TOR. On March 22, 2004, the School's certified personnel received a letter from the Parent, listing 17 items of concern, including the Parents' request for re-testing and a conference. The Parent's letter asked the School to indicate the date the testing will take place. Sixty instructional days from March 22, 2004, will be September 8, 2004.
15. During the CCC meeting on March 25, 2004, the Parent reported receiving a message from the clerk (Clerk) in the School's psychological services office that re-evaluations are not governed by the 60-day timeline. The Notes of Discussion state, "[The Clerk] contacted [the Parent] on 3/24/04 and indicated/clarified that [the Student's] re-eval will be completed by the end of the 2003-2004 school year." The School denies that the Clerk made a commitment, or had the authority to make a commitment, to complete the Student's re-evaluation prior to the due date of September 4, 2004. The Clerk did not change the due date on the Referral Data Form or other forms used to track evaluation scheduling and completion. The front pages of the Student's IEP (including the Addenda of March 25, 2004, of April 30, 2004, and of May 15, 2004) continue to identify the re-evaluation date as September 4, 2004.
16. The Parent acknowledges that the School contacted the Parent in June to schedule the re-evaluation during the summer. The Parent refused the offer, due to the Student's busy summer schedule.
17. The Student's IEP, as adopted by the CCC on October 13, 2003, specified classroom adaptations such as reading tests to the Student "as needed," providing study guides and modified tests, etc. The Student's interim report card dated February 20, 2004, identified the grades for all content areas as "modified." At the CCC meeting on March 25, 2004, the Parent requested fewer (testing) modifications

in content areas. However, the list of classroom adaptations was not changed. The IEP does not define criteria for determining when accommodations are “needed,” nor does the IEP specify the nature or extent of the modifications.

18. The School submitted no documentation of instructional and testing accommodations or modifications and, in particular, submitted no documentation of a reduction in accommodations/modifications following the March 25, 2004, CCC meeting.
19. During the CCC meeting on March 25, 2004, the Parent “agreed to allow [the Student] to see Mr. ... for support sessions to address possible anxiety issues.” The school staff person identified by name is a school social worker. The Student’s IEP (including the Addendum developed March 25, 2004) does not specify a particular amount of school social work services to be provided, nor is an assessment required by the IEP.
20. The Parent acknowledges that the Student met with the school social worker once. The School has provided no documentation that additional social work services were offered or provided to the Student.
21. During the CCC meeting on March 25, 2004, the Parent “agreed to have an ADD screening/rating scale facilitated by the school/resource teacher.” On March 25, 2004, the Parent signed the IEP Addendum that includes the Notes of Discussion referencing the screening for Attention Deficit Disorder (ADD). Sixty instructional days from March 25, 2004, will be September 13, 2004.
22. When the CCC met on April 30, 2004, the CCC agreed upon a total of 24 hours of extended school year (ESY) services in reading instruction. The stated reason for ESY was the Student’s lack of expected progress in reading decoding. The Parent agreed with the ESY proposal, as indicated by the Parent’s signature on the IEP dated April 30, 2004.
23. The CCC reconvened on May 14, 2004, to reconsider ESY. The School proposed that the Student participate during the summer in a remediation program designed for both general education students and special education students who did not pass ISTEP, instead of the special education ESY services contemplated by the CCC on April 30, 2004. The Parent did not consent to the revised proposal.
24. It is undisputed that the School is implementing the ESY services described in the IEP dated April 30, 2004, and in addition the Student is participating in the remediation program.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the Student’s IEP contains a statement of measurable annual goals in Reading, Written Language, and Math, but that the Communication goal is not a measurable annual goal, as it does not describe what the Student can be expected to accomplish within a twelve month period. Therefore, a violation of 511 IAC 7-26-6(a)(2) occurred by failing to include in the Student’s individualized education program (IEP) a measurable annual Communication goal.
2. Findings of Fact #2 and #4 indicate that the Student’s IEP contains statement(s) of how the Student’s progress toward annual goals, including benchmarks and short-term objectives, will be measured. Therefore, no violation of 511 IAC 7-26-6(a)(7)(A) occurred.
3. (1) Findings of Fact #2, #5, and #6 indicate that progress reports were not provided to the Parent in accordance with the review/reporting schedule(s) specified in the Student’s IEP. Therefore, a violation

of 511 IAC 7-27-7(a) occurred by failing to provide the Parent with progress reports as described in the IEP.

- (2) Findings of Fact #2, #7, and #8 indicate that the Student's Soar book was not sent home every Friday. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing by failing to provide the Soar book when required by the Student's IEP.
 - (3) Findings of Fact #9 and #10 indicate that, as of the date this Complaint was filed, more than the required amount of assistive technology service had been provided by the occupational therapist. Therefore, no violation of 511 IAC 7-27-7(a) occurred in connection with the provision of 90 minutes of direct/consultative occupational therapy per month.
 - (4) Findings of Fact #11 and #12 indicate that the School has not documented that collaborative meetings occurred among the speech/language pathologist (SLP), the special education teacher, and the general education teacher (and later, the instructional assistant). Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the IEP requirement to conduct bi-monthly collaborative meetings.
 - (5) Findings of Fact #13, #14, #15, and #16 indicate that the Student's re-evaluation is not overdue, nor is an additional evaluation overdue. Finding of Fact #15 indicates that the Student's IEP did not establish a re-evaluation due date earlier than September 4, 2004. Therefore, as of the date this Complaint was filed, no violation of 511 IAC 7-27-7(a) occurred by failing to conduct the re-evaluation or an additional evaluation by the end of the 2003-2004 school year. Further, Finding of Fact #16 indicates that, if there had been a violation, the Parent refused the corrective action voluntarily offered by the School.
 - (6) Finding of Fact #17 indicates that the IEP is ambiguous with respect to accommodations and modifications and non-specific as to the changes (if any) agreed upon by the CCC as of March 25, 2004. Finding of Fact #18 indicates that the School has not documented implementation of the accommodations and modifications. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement a reduction in accommodations/modifications.
 - (7) Findings of Fact #19 and #20 indicate that the CCC revised the Student's IEP by adding social work services in schools as a related service. The IEP used the plural term "support sessions," but the School has not documented that more than one session was provided. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to provide the Student with support sessions with the school social worker.
 - (8) Findings of Fact #13 and #21 indicate that, whether screening for Attention Deficit Disorder was to be a component of the Student's re-evaluation or an additional evaluation, the due date is after, not before, the filing of this Complaint. Therefore, as of the date this Complaint was filed, no violation of 511 IAC 7-27-7(a) occurred by failing to conduct a screening for Attention Deficit Disorder.
4. Findings of Fact #22 and #23 indicate that the CCC process was utilized to consider and to reconsider the Student's need for extended school year services, and Finding of Fact #24 indicates that the School is providing ESY services in accordance with the last agreed-upon IEP. Therefore, no violation of 511 IAC 7-27-4(c) occurred.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

MSD of Lawrence Township shall:

By September 10, 2004, reconvene the Student's case conference committee (CCC) to review and revise the Student's Communication goal so that it is a measurable goal. The CCC is authorized to make additional revisions to the IEP and may develop a completely new IEP for the 2004-2005 school year. If the IEP is not changed (except for the Communication goal), then the School shall:

- a. During the period beginning August 17, 2004, through September 24, 2004, provide daily progress reviews on the Student's progress toward achievement of the Written Language goal and objectives.
- b. If the Student continues to use the Soar series of reading books, send the Soar book home on following dates: August 20, 2004; August 27, 2004; September 3, 2004; September 10, 2004; September 17, 2004; and September 24, 2004.
- c. Document collaborative meetings among the Student's special education teacher, general education teacher(s), and speech/language therapist.
- d. Document the testing accommodations or modifications utilized by the Student during the period beginning August 17, 2004, through September 24, 2004.

Documentation of compliance shall be submitted no later than October 1, 2004.